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PART II—Section 3—Sub-section (ii)

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No. 73] NEW DELHI, WEDNESDAY, APRIL 30, 1958/VAISAKHA 10, 1880

ELECTION COMMISSION, INDIA.

NOTIFICATION

New Delhi, the 28th April 1958

S.O. 721.—In continuation of the Election Commission's notification No. 82/431/57/13230, dated the 7th December, 1957, published in the Gazette of India, Extraordinary, Part II—Section 3 (No. 580), dated the 11th December, 1957, under section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Judgment of the High Court of Mysore at Bangalore delivered on the 28th February, 1958, on the appeal filed by Shri B. Shyam Sunder, resident of Devappa Building, Gazipura, Gulbarga, against the order dated the 15th October, 1957, of the Election Tribunal, Gulbarga, in Election Petition No. 431 of 1957.

IN THE HIGH COURT OF MYSORE AT BANGALORE

Friday, the 28th day of February, 1958

PRESENT

The Hon'ble Justice Shri A. R. Somnath Iyer

AND

The Hon'ble Justice Shri S. S. Mallmath.

MISCELLANEOUS APPEAL No. 177/57

B. Shyamsunder, son of B. Manikyam, Caste Mala, Aged 52 years, Occupation Political Worker, Resident of Devappa Building, Gazipura, Gulbarga,—Petitioner—Appellant.

(By Sri H. F. M. Reddy)

Vs.

1. Shanker Deo Vedalankar, S/o, Balaji Rao, Caste Arya Samaj, Aged 32 years, Occupation—Social Worker, C/o Shri Dattatri Rao, Awarodi Kannada Sahitya Sangh, Jagat, Gulbarga.
 2. Mahadeo Appa Rampure, Congress Leader, Gulbarga, Congress Committee, Gazipura, Gulbarga.
 3. Sharangouda Inamdar, M.L.A., Gazipura, Gulbarga.—Respondents.
 4. R. V. Bidap, B.A., LL.B., Advocate, Bidar.
- All are candidates that contested the election from the constituency.

(Respondents 1 and 2 by Shri Jagannatha Rao Chandaiki Miscellaneous Appeal against the order dated 15th October, 1957 passed by the Election Tribunal, Gulbarga, in Election Petition No. 431 of 1957.)

This appeal coming on for hearing this day, the Court (Somnath Iyer, J) delivered the following:—

JUDGMENT

Somnath Iyer J.

In an election for a seat reserved in the House of the People for the Scheduled Castes from the Gulbarga Parliamentary Double-Member Constituency, Appellant and Respondent 1 were the contesting candidates. On March 23, 1957, the Returning Officer declared the first Respondent as having been elected to that seat. The Appellant presented an election petition on May 3, 1957, under the provisions of the Representation of the People Act, calling in question the said election of Respondent 1. This election petition was notified under the provisions of sub-section 1 of the sec. 86 in the Official Gazette by the Election Commission which subsequently appointed on June 24, 1957, an Election Tribunal to try that Election petition. On July 9, 1957, notices were issued by the Election Commission to all the concerned parties fixing the date and place of the trial. The trial was fixed to commence on July 19, 1957.

The Election Tribunal so appointed commenced the trial on July 19, 1957, on which date the trial was adjourned to August 5, 1957, for the production of the written statements of Respondents 1 to 3. On August 5, 1957, Respondents 1 and 2 filed their written statements and the trial was adjourned to August 21, 1957, for the production of the written statement of Respondent 3 and also the Appellant's rejoinder to the written statements of Respondents 1 and 2. On August 21, 1957, the written Statement of Respondent 3 was not produced although the Appellant filed his rejoinder to the written statements of Respondents 1 and 2. At the request of Respondent 3, the trial was again adjourned to 27th August, 1957 for the written statement of Respondent 3. On that date, Respondent 3 produced his written statement and the Appellant said that he would not produce any rejoinder to that written statement.

Eight issues were framed by the Election Tribunal on that date and the Tribunal directed that the parties should submit their lists of witnesses within a fortnight from that date. The Appellant was directed to get summonses issued to his witnesses within a fortnight from that date and the trial was directed to commence on October 15, 1957.

By October, 15, 1957, on which date the trial had to commence, none of the parties had produced any witness list. So it was that the Appellant made an application to the Tribunal on that date together with a witness list which he produced along with it, requesting an adjournment of the trial in order that his witnesses might be summoned and examined. Respondent 1 opposed that application for an adjournment. The ground mentioned by the Appellant in his application was that he was "unavoidably and overwhelmingly pre-occupied" and could not, therefore, prepare within the time prescribed his list of witnesses, which, when produced, was an extraordinarily long list.

The Election Tribunal, however, dismissed that application presented by the Appellant, having come to the conclusion that no sufficient ground had been established by the Appellant for obtaining any such adjournment. The Election Tribunal, in the course of its order, referred to the provisions of the Representation of the People Act, which required it to try the election petition as expeditiously as possible and to endeavour to conclude the trial within six months from the date of the publication of the election petition in the official gazette under the provisions of sub-section 1 of Section 86 of the Act. It was of opinion that the Appellant had been indiligent in getting ready with his evidence and that there was no ground to justify the grant of an adjournment. It recorded findings on all the eight issues against the Appellant and dismissed his election petition with costs of Respondents 1 and 2. From that order, the Appellant has appealed to this Court under the provision of Section 116-A of the Representation of the People Act.

Mr. Reddy, on behalf of the Appellant, has urged that the Election Tribunal did not exercise a sound judicial discretion in declining the adjournment for which the Appellant prayed, although at one stage of his arguments he tried to urge

before us several other contentions which he later withdrew. He also withdrew the curious allegations contained in some affidavits which he produced at a late stage in this Court in the course of one of which a Pleader appearing on behalf of the Appellant before the Election Tribunal, made what we must regard as extremely improper allegations against the Election Tribunal.

Mr. Reddy, in trying to persuade us to hold that the Election Tribunal did not exercise its discretion judicially in refusing the adjournment for which the Appellant prayed, has pointed out to us that on the date on which the Election Tribunal dismissed his election petition, it had still two months out of the period of six months prescribed by sub-section 6 of Section 90 of the Act and that it was quite possible for the Election Tribunal to dispose of the election petition within that period of time even if it had granted a short adjournment to the Appellant. He has also pointed out to us that it was not the Appellant, alone that omitted to file the witness list within the two weeks prescribed by the order made by the Election Tribunal on July 28, 1957, but that none of the Respondents had produced any such witness list either. He has also pointed out to us that the period of nearly a month between the date of the publication of the election petition in the official gazette, and the date on which the trial commenced before the Election Tribunal, was occupied by the appointment of the Tribunal by the Election Commission and the issue of notices to the parties as required by the Act. He has also urged before us that on none of these dates on which the trial was adjourned between July 19, 1957 and August 27, 1957, did the Appellant ask for any adjournment, all the adjournments having been applied for, either by Respondent 3 or by Respondents 1 and 2. In these circumstances, Mr. Reddy argued that the Election Tribunal would have exercised its discretion less arbitrarily if it had granted at least one more adjournment especially in view of the fact that the appellant's inability to prepare his witness list was attributable to his having been busy with important public work to which he had to attend as a Member of the Legislative Assembly.

Whatever may be the merit in the contention of Mr. Reddy that there was any justification for the Appellant in omitting to produce his witness list on account of his work in the Legislative Assembly, it appears to me that the Election Tribunal would have, in the circumstances of this case, and having regard to the fact that the election petition came up for recording evidence for the first time on October 15, 1957, exercised its discretion more judicially in the matter of disposing of the application for an adjournment presented by the Applicant, if it had granted a short-adjournment to the Appellant instead of dismissing his election petition with the haste with which it did. The Election Tribunal was obviously unaware of the observation of the Supreme Court in *Sangram Singh v. Election Tribunal*, Kotah and another, 10 Election Law Reports, Part III, page 293, in which it strongly deprecated the tendency of some Judges to think in terms of punishments or penalties properly so called when they should instead be thinking of compensation and the avoidance of injustice to both sides. The Election Tribunal did not pay adequate attention to the fact that on all the other dates of hearing on which the election petition came up before it, the appellant was not guilty of any indiligence or laches, or to the fact that in the trial of an election petition in which serious allegations, such as those that have been made by the Appellant in this case against Respondent 1, are made, it is in the interests of the purity of elections that it is necessary that the Election Tribunal should, as far as possible, not dispose of the election petition with the hurry with which it has been done in this case.

Mr. Reddy has submitted to us that he abandons and does not press the matters covered by issues 2 to 7 and that if we now set aside the order dismissing his election petition, he would produce evidence only in regard to the matter covered by the first issue. He has also given an undertaking that he would examine only 20 witnesses, including the first 13 witnesses, whose names are enumerated in the list which the Appellant produced along with his application for an adjournment before the Election Tribunal. He has given a further undertaking that he would ask for no summonses to be issued to the seven witnesses other than those first thirteen witnesses in the said list. He has also pleaded before us that, in those circumstances, the order dismissing his election petition should be set aside subject to such terms as we might impose in that regard.

In my opinion the order of the Election Tribunal under appeal cannot be sustained, as it has been made without due regard to the standards of judicial discretion to be exercised in regard to the prayer for an adjournment which the Appellant made in the trial of this election petition. It is clear, I think, that in refusing the adjournment for which the Appellant prayed, the Election Tribunal acted somewhat unreasonably and with undue severity. This appeal should,

therefore, be allowed. The order of the Election Tribunal dismissing the election petition of the Appellant should be, and is, set aside, subject to this condition that the trial of this election petition shall be commenced and shall go on from day to day, as agreed to by both sides, within three weeks from the date of the receipt of the records from this court by the Election Tribunal, and that the Appellant will be permitted to press his election petition only in regard to the matter covered by the first issue framed by the Election Tribunal and produce evidence only in regard to that matter, that issue reading as follows:—

“Is respondent No. 1 an Arya Samajist by creed, belief and profession and so not a member of a Scheduled Caste?”

His Election Petition in regard to issues 2 to 7 must be regarded to have been dismissed and the Appellant will not be permitted to produce any evidence in regard to these matters, or to urge the contentions covered by them, as undertaken by Mr. Reddy in this Court. The Appellant shall forthwith take out summonses to the first thirteen witnesses in the list which he produced before the Election Tribunal and he must produce the remaining seven witnesses whom he proposes to examine without applying for any summonses in that regard.

The only matter which remains to be disposed of is that relating to the terms which have to be imposed on the Appellant as a sequel to the order which we have made. What, in my opinion, we should direct in that regard is that the entire sum of Rs. 500/- which has been deposited as security for costs in this Court along with his appeal shall be paid to Respondents 1 and 2 as their costs in this appeal and as a condition precedent to the order of the dismissal of the election petition being set aside. Respondents 1 and 2 will be entitled to that amount irrespective of the ultimate decision in the election petition. In this Court, the Appellant will bear his own costs. Let the records be forthwith returned to the Election Tribunal for disposal of the Election Petition according to law.

(Sd.) A. R. SOMNATH IYER,
Judge.

Malimath J.
I agree.

(Sd.) S. S. MALIMATH,
Judge.

[No. 82/431/57/10779.]

By Order,
DIN DAYAL, Under Secy.